

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

IN RE:)
)
PRISCILLA SQUIRE-LEE,) CASE NO. 13-81459
) CHAPTER 13
DEBTOR.)

MOTION FOR, AMONG OTHER THINGS,
RELIEF FROM THE AUTOMATIC AND CO-DEBTOR STAYS

COMES NOW Hyundai Capital America, Inc. dba Kia Motors Finance Company ("Kia"), pursuant to 11 U.S.C. §§362(d) and 1301(c), and moves for relief from the automatic and co-debtor stays herein or, in the alternative, applies to the Court for adequate protection of its interest in the below-described vehicle, as follows:

1. The Debtor commenced this case by petition filed on or about November 14, 2013.
2. On or about November 29, 2012, the Debtor and Jasmine Omelia Lee (the "Co-Debtor") jointly purchased a 2013 Kia Soul, VIN #KNDJT2A59D7526982 (the "Vehicle"), pursuant to the terms of an installment sales contract of even date (the "Contract"). A copy of the Contract is attached hereto marked Exhibit 1. The Contract was subsequently assigned to Kia and Kia now has the right to enforce the Contract.
3. Under the terms of the Contract, Kia has a senior security interest and first lien on the Vehicle which it duly perfected. See Exhibit 2.
4. The Chapter 13 Plan calls for the payments due under the Contract to be made directly to Kia by the Co-Debtor. According to Kia's records, as of August 1, 2018, the payments due under the Contract were in arrears for a partial amount due for May 13, 2018 of \$153.03, and the full payments due for June 13, 2018 and July 13, 2018 of \$331.01 each, for a total arrearage of \$815.05. See Exhibit 3.
5. As of August 1, 2018, the net payoff due under the Contract was \$2,619.50. At the same time, the base NADA wholesale value of the Vehicle was approximately \$4,975.00. See Exhibit 4.
6. Under these circumstances, Kia does not have adequate protection of its security interest in the Vehicle, and thus there is good cause to grant Kia relief from the automatic and co-debtor stays under 11 U.S.C. §§362(d) and 1301(c).
7. If Kia is not permitted to foreclose its security interest in the aforesaid Vehicle, it will suffer irreparable injury, loss and damages.

8. Due to the nature of the Vehicle as being a depreciating asset that is easily moved, easily secreted and easily damaged, Kia also hereby requests that any order granting the relief requested herein be immediately effective.

WHEREFORE, Kia moves the Court for the following relief:

1. The Court enter an Order pursuant to 11 U.S.C. §§ 362(d) and 1301(c) lifting the automatic and co-debtor stays to permit Kia to foreclose its security interest in the Vehicle in accordance with the Contract and applicable law, and to thereafter pursue the Co-Debtor for any amounts which may remain due under the Contract after sale of the Vehicle.

2 The 14-day stay provided for in Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure be waived and the lifting of the automatic and co-debtor stays pursuant to the terms of this Order be effective immediately upon entry.

3. The Debtor be ordered to release the Vehicle to Kia or advise it of the location of the Vehicle and the name, address, and telephone number of any third party in possession of the Vehicle.

4. Kia be allowed a general unsecured claim in this case for any outstanding deficiency balance remaining after sale or subsequent disposition of the Vehicle.

5. In the alternative, Kia be afforded adequate protection of its security interest in the Vehicle, including proof of continuing insurance coverage on the Vehicle naming Kia as loss payee, and reimbursement of the \$431.00 in reasonable attorneys' fees and costs incurred in connection with this Motion.

6. Kia have such other and further relief as to the Court seems just and proper.

This the 2nd day of August, 2018.

KIRSCHBAUM, NANNEY, KEENAN & GRIFFIN, P.A.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this day, she served a copy of the foregoing on the parties in interest either electronically or by depositing copies of same in a depository under the exclusive care and custody of the United States Postal Service, in a postage-paid envelope, addressed as follows:

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This the 2nd day of August, 2018.

s/ Gwen T. Best
Gwen T. Best
Paralegal